

**Chapter 3-145 Treatment Purchase of Service
Summary of Changes**

Required Posting of Awards

- Adds requirement of posting of contract awards on the Internet.

Electronic Submission of Statements of Qualifications

- Amends language to allow submission by any electronic submission rather than just via e-mail.
- Amends time of receipt from transmission to actual receipt for purposes of as the accuracy of time of transmission may vary depending on the device used for transmission.

HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 11

PROCUREMENT POLICY BOARD

CHAPTER 145

TREATMENT PURCHASE OF SERVICE

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SUBCHAPTER 1

PURPOSE AND SCOPE

§3-145-101 Purpose. The purpose of this chapter is to implement section 103F-404, HRS, which establishes the treatment purchase of service method of procurement, by providing rules and procedures for the use of this method of procurement.

§3-145-102 Scope. (a) The treatment purchase of service method of procurement may be used to procure treatment services when:

- (1) The proposed contract for treatment services is for consideration of \$100,000 or less;
- (2) The proposed contract for treatment services is for a term of one year or less; and
- (3) Either or both of the following circumstances is applicable:
 - (A) The need for the treatment services in the proposed contract may arise from time to time, but the need can not be anticipated accurately on an annual or biennial basis; or
 - (B) Delaying treatment until a competitive purchase of services could be conducted would render the problem worse than at the time of diagnosis or assessment.

(b) Waiver for good cause. If a proposed contract for treatment services would otherwise satisfy subparagraph (a)(3) of this section, then the chief procurement officer may, for good cause, waive in writing the requirements of subparagraphs (a)(1) and (a)(2). Circumstances constituting good cause for a waiver include but are not limited to:

- (1) The proposed contract will be for a term of eighteen months or less, and the treatment will no longer be needed thereafter; or
- (2) The proposed contract will be for \$150,000 or less, and the treatment will no longer be needed after the expiration of the contract.

SUBCHAPTER 2

CORE PROCEDURES

§3-145-201 Planning for solicitations for statements of qualifications and submission to administrator. (a) Before the beginning of each fiscal year, each purchasing agency shall determine the types of treatment services that it may need to procure under the provisions of this chapter.

(b) Submission to administrator for publication of notice. Based on their determinations, the purchasing agencies shall prepare reports that state the treatment services that may be required, the type or types of professionals that can provide the required services, and the minimum qualifying credentials required for each type of professional. Reports shall be prepared in a form provided by the administrator and shall be submitted to the administrator by a date and time set by the administrator so that notice of the solicitations can be given as required under section 3-145-202.

§3-145-202 Public notice for solicitations for statements of qualifications. (a) Based on the reports submitted under section 4-145-201, the administrator shall publish a public notice of solicitations of statements of qualifications before the beginning of each fiscal year and more often as necessary in accordance with this section.

(b) Purpose of public notice. Public notice of solicitations for statements of qualifications shall be made to encourage competition among providers so that the state obtains the most advantageous contracts for treatment services that the market can support.

(c) Contents of public notice. Public notice of solicitations for statements of qualifications shall include the following information:

- (1) A summary of the information in the reports submitted by the purchasing agencies under section 3-145-201;
- (2) The submittal deadline for statements of qualifications, and the locations where statements of qualifications may be submitted; and
- (3) Any other appropriate material information, including but not limited to, any required format for statements of qualifications.

(d) Required newspaper publication. A copy of the public notice of the solicitation for statements of qualifications shall be published at least once in a newspaper of general circulation within the state, and, to the extent practicable, at least once in a newspaper of local circulation within the island in which the treatment services may be provided. The date of the last newspaper publication shall be at least fourteen calendar days before the submittal deadline for statements of qualifications.

(e) Additional media for publication authorized. In addition to the required newspaper publication, copies of the public notice may be given in any manner deemed reasonably likely to promote competition among providers, including but not limited to the following:

- (1) Further publication of notice in newspapers of general or local publication;
- (2) Telephone calls, United States mail, telefacsimile transmission, or electronic mail to potential applicants on a provider list compiled in accordance with section 3-141-401; or

- (3) Publication by any public or private telecommunication information network.

(f) Solicitations made at other times of the year.

In addition to the annual notice required under this section, the administrator may give notice of solicitations prepared by the purchasing agency whenever necessary or advisable. Such notice shall be given in accordance with the requirements of this section.

§3-145-203 Submission and receipt of statements of qualifications. (a) Statements of qualifications shall be submitted to the administrator no later than the submittal deadline. Statements of qualifications may be submitted by hand-delivery or United States mail. Statements of qualifications submitted by hand-delivery shall be deemed to have been received when actually delivered, and statements of qualifications submitted and received by United States mail shall be deemed to have been received on the date they are post-marked rather than the date they are actually received.

(b) Procedure for receiving documents.

Statements of qualifications, modifications to statements, and withdrawals of statements shall be received according to the procedure in this subsection:

- (1) Upon receipt at a designated location, statements of qualifications, modifications to statements, and withdrawals of statements shall be date-stamped and, when possible, time-stamped.
- (2) All documents so received shall be collected by the administrator, to be held in a secure place for evaluation after the submittal deadline.

§3-145-204 Evaluation of statements of qualifications and preparation of list of qualified

providers. (a) After the submittal deadline, all statements of qualifications, modifications, and withdrawals shall be reviewed, and a list of qualified providers shall be prepared in accordance with this section.

(b) Appointment of committee. The administrator shall form an evaluation committee consisting of a minimum of three employees from a state agency or agencies with sufficient education and training to evaluate the statements of qualifications that the administrator receives in response to the solicitation. Non-state employees may serve as advisors to the evaluation committee in the evaluation of statements of qualifications but may not represent or act on behalf of the administrator in the preparation of a list of qualified providers. A copy of the document identifying the evaluation committee members and any subsequent changes thereto shall be placed in the procurement file.

(c) Preparation of evaluators. If the administrator deems it necessary or advisable, the evaluators may meet with other state agency personnel in advance of the formal evaluation process in order to discuss any issue relevant to the evaluation or the solicitation.

(d) Procedure for evaluation. The evaluation committee shall review and evaluate the submissions and other pertinent information, including references and reports. The evaluation of the statements of qualifications shall be based solely upon the minimum qualifying credentials as stated by the purchasing agencies in their reports to the administrator. Based on the minimum qualifying credentials, the applicants shall be rated "qualified" or "unqualified" based on their statements of qualifications.

(e) Forbidden criteria for evaluation. Evaluations shall not be based on race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, mental or physical disability, political affiliation of the applicant, or any other criterion prohibited by applicable federal, state, or county law, unless such criterion is permitted by law.

(f) Preparation of list of qualified providers. After all of the statements of qualifications have been evaluated, the committee shall prepare a list of all providers that received a rating of "qualified."

(g) Distribution of list of qualified providers. The administrator shall distribute copies of any list of qualified providers prepared under this section to the heads of the purchasing agencies. In addition, a copy of any such list shall be made available for public inspection at the state procurement office.

(h) Notice to applicants. After any list of qualified providers has been prepared under this section, the administrator shall promptly notify all applicants of their ratings under the evaluation process.

(i) Required Posting of Contract Awards. All contract awards made under the treatment method of procurement shall be posted to the internet no later than the seventh day after execution of a contract. The administrator may prescribe the format of the posting and the website to which it will be posted. Information posted shall include:

- (1) The name of the awardee;
- (2) The service title and list from which the provider was selected;
- (3) The amount awarded;
- (4) The start and end dates of the contract; and
- (5) The names of any other providers on the list that were contacted in conjunction with the procurement.

§3-145-205 Procedure for procurement of treatment services. (a) When the need to purchase treatment services arises, the head of a purchasing agency shall select the provider from the appropriate list of qualified providers that is most advantageous based on the following factors:

- (1) Demonstrated competence for the type of treatment service required;
- (2) Qualification for the type of service required; and

(3) Fairness and reasonability of price, or other applicable cost factor.

(b) Negotiation of contract. The head of the purchasing agency, or a designee, shall negotiate a contract, including a rate of compensation which is fair and reasonable, established in writing, and based upon the estimated value, scope, nature, and complexity of the treatment services to be rendered, or use the rate established by the administrator, if any. Negotiations shall be conducted confidentially.

(c) Failure of negotiations. If negotiations fail, then upon written notice of an impasse to the provider selected under section (a), the head of the purchasing agency may choose another provider from the list of qualified providers and conduct further negotiations.

SUBCHAPTER 3

CONTENT REQUIREMENT

§3-145-301 Contents of statements of qualifications. (a) Every statement of qualifications shall, at a minimum, include the following information:

- (1) The name of the applicant, the applicant's principal place of business, and any branch offices;
- (2) The number of years the applicant has been established in business and its average number of employees over the past three years, as applicable;
- (3) The education, training, and qualifications of key members of the applicant;
- (4) The names and phone numbers of up to five clients or referral sources who may be contacted, including at least two for whom services were rendered

during the preceding year, as applicable;

- (5) Reports or descriptive materials which the applicant desires to submit;
- (6) Descriptive materials on organizational and service capability; and
- (7) Any additional information or materials deemed by the purchasing agency or the applicant to be necessary or advisable for the evaluation process.

(b) Preparation of uniform format. The administrator shall prepare a uniform format for all statements of qualifications, provided that such format includes all the information required under subsection (a) of this section.

SUBCHAPTER 4

ALLOWABLE COMMUNICATIONS

§§3-145-401 to 3-145-410 (Reserved).

SUBCHAPTER 5

EXPEDITING PROCEDURES

§3-145-501 Use of telefacsimile for treatment purchase of service. (a) Statements of qualifications and amendments may not be submitted to the administrator by telefacsimile transmission except when such transmission is explicitly authorized in the public notice for statements of qualifications.

(b) Applicant bears responsibility for transmission. Applicants who submit statements of qualifications or amendments by telefacsimile transmission bear the whole and exclusive responsibility for assuring the complete, legible, and timely transmission of their documents to the

administrator. By opting to submit documents by telefacsimile transmission, applicants assume all risk that the administrator's telefacsimile receiver may be inoperative or otherwise unavailable at the time transmission is attempted.

(c) Time of receipt. For purposes of the submittal deadline, a statement of qualifications or amendment submitted via telefacsimile transmission shall be deemed to have been received when the last page of a complete, legible copy of the document has been received by the administrator.

(d) Requirement of a complete original. A statement of qualifications or amendment transmitted by telefacsimile shall be considered valid only if a complete original copy of the statement of qualifications is received by the administrator, and is post-marked by the second working day after the telefacsimile transmission.

§3-145-502 ~~Use of electronic mail for treatment~~
~~purchase of service.~~ Electronic submission of
statements of qualifications. (a) Statements of qualifications and amendments thereto may not be submitted to the administrator by electronic ~~mail~~ means except when such transmission is explicitly authorized in a solicitation for statements of qualifications.

(b) Applicant bears responsibility for transmission. Applicants who submit statements of qualification or amendments by electronic mail bear the whole and exclusive responsibility for assuring the complete, correctly-formatted, and timely transmission of their documents to the administrator. By opting to submit documents by electronic ~~mail~~ means, applicants assume all risk that the administrator's computer system may be inoperative or otherwise unavailable at the time transmission is attempted.

(c) Time of receipt. For purposes of the submittal deadline, a statement of qualifications or amendment submitted via electronic ~~mail~~ means shall be

deemed to have been received upon ~~[transmission]~~ actual receipt of a correctly-formatted copy of the document by the administrator.

(d) Requirement of a complete original. A statement of qualifications or amendment transmitted by electronic ~~mail~~ means shall be considered valid only if a complete original copy of the statement of qualifications is received by the administrator, and is post-marked by the second working day after the electronic ~~mail~~ transmission.

SUBCHAPTER 6

MISCELLANEOUS PROCEDURES

§3-145-601 Modification or withdrawal of statements of qualifications before submittal deadline. Before the submittal deadline, applicants may freely and at any time modify or withdraw their statements of qualifications by written notice referencing the original statement of qualifications and either detailing the modification, or stating the intent to withdraw the statement. The applicant shall submit the notice in the same manner as provided in the public notice of solicitation.

§3-145-602 Late statements of qualifications rejected. Any statement of qualifications, withdrawal, or modification submitted after the submittal deadline is late and shall be rejected on that basis. Notice of the rejection for late submission shall be given to the applicant, and the administrator shall discard the late submission thirty calendar days after its receipt. Before its disposal, the applicant may retrieve the late submission from the administrator.

§3-145-603 Disposition of rejected statements of

qualifications. Whenever a statement of qualifications is rejected under section 3-145-602, or section 3-141-201, or -202, the administrator may discard the rejected statement of qualifications thirty calendar days after its rejection. Before disposal, the applicant may retrieve the rejected statement of qualifications.

§3-145-604 Register of statements of qualifications. A register of statements of qualifications shall be prepared and made available to the public within ten working days after the submittal deadline, or a reasonable time. The register shall include the following information from each statement of qualifications:

- (1) The name of each applicant; and
- (2) The types of services for which the applicant is attempting to qualify.

§3-145-605 Updating of statements of qualifications. (a) After an applicant has been included on the list of qualified providers under section 3-145-204, the applicant may amend its statement of qualifications whenever the applicant deems it necessary or appropriate.

(b) Duty to update upon inquiry. If a purchasing agency contacts a provider from a list of qualified providers in connection with the purchase of treatment services, that provider shall have a duty to update its statement of qualifications as to any material changes in the information in the statement.

(c) Material change defined. For purposes of this section, a material change to a statement of qualifications is one that a reasonable procurement officer would want to be informed of before deciding to award a contract, regardless of whether the materially changed information would actually alter the officer's decision to award or not award the contract.

(d) Failure to update. If at any time a purchasing agency discovers that a provider has failed to update information as required under this section, then the award of any contract by the purchasing agency to the provider may be revoked, and any contract with the provider terminated.

§3-145-606 Inadequate response to solicitation for statements of qualifications. If no provider submits a statement of qualifications that meets the minimum standard for qualification, then the administrator may respond by taking any of the following actions after consulting with the purchasing agency that requested the services in question:

- (1) Republish notice. The administrator may republish the solicitation for statements of qualification.
- (2) Alternate service delivery. The purchasing agency may select an alternate method of service delivery and the administrator may publish a new solicitation for statements of qualification.
- (3) Selection without competition. The administrator may authorize the purchasing agency to select a provider without further solicitation upon making a written determination that it is neither practicable nor advantageous to publish a new notice of solicitation for statements of qualifications based on a consideration of the following factors:
 - (A) Competition in the marketplace;
 - (B) Whether the additional potential cost of preparing, soliciting, and evaluating statements of qualifications is expected to exceed the benefits normally associated with the solicitation;and

- (C) Any other factors that the purchasing agency deems relevant to this determination.
- (4) Restrictive Purchase of Services. The purchasing agency may make a restrictive purchase of services by following the procedures established under chapter 3-144.

§3-145-607 Public inspection of statements of qualifications. (a) The procurement file for every solicitation for statements of qualifications shall be available for public inspection to the extent permitted by law governing information practices.

(b) Keeping of procurement file and contents. The administrator shall maintain procurement files for every solicitation for statements of qualifications that he or she conducts. The procurement file shall contain all records that the administrator keeps that are connected to the solicitation for statements of qualifications. At a minimum, the records kept in the procurement file shall include but not be limited to the following:

- (1) The register of statements of qualifications prepared pursuant to section 3-145-604;
- (2) Names of qualified applicants;
- (3) The minimum qualifying standard established by the purchasing agencies;
- (4) A copy of the notice of solicitation for statements of qualifications; and
- (5) A copy of the submitted statements of qualifications.

§3-145-608 Treatment purchase of service record of procurement actions. (a) The heads of purchasing agencies or procurement officers shall maintain records by fiscal year of all treatment purchase of service contracts made by their respective agencies for a minimum of the past five fiscal years.

(b) Annual reports of treatment purchase procurements. By the fifteenth day of August of each year, the heads of purchasing agencies or procurement officers shall make reports to the administrator of all treatment purchase of service contracts made by their respective agencies for the immediately preceding fiscal year. The report shall be made in the format prescribed by the administrator.

(c) Annual consolidated report. By the first day of October of each year, the administrator shall make a consolidated report of all treatment purchase of service procurements made during the immediately preceding fiscal year. A copy of this report shall also be sent to the procurement policy board.